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IN THE
COURT OF APPEALS OF INDIANA

HENRY WASHINGTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A04-0510-CR-614
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D02-0505-FB-00188

SEPTEMBER 26, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Henry Washington appeals his conviction of dealing in cocaine, a Class A felony. Ind. Code § 35-48-4-1. We affirm.

ISSUE

Washington presents one issue for our review, which we restate as: whether the trial court erred by denying Washington's motion to suppress.

FACTS AND PROCEDURAL HISTORY

Washington was driving his van in Kokomo, Indiana. When Washington stopped at a traffic signal, two Kokomo police officers stopped behind him and noticed that one of his brake lights was not functioning. Upon noticing this, the officers ran a check on Washington's license plate and discovered that the driver's license of the registered owner of the vehicle was suspended. Based upon this information, the officers stopped the van and made contact with Washington, who was driving. Washington told the officers that his license was suspended. The officers arrested Washington and proceeded with an inventory search of the van, which produced drug paraphernalia and cocaine. Additionally, while being searched at the jail, Washington turned over a bag containing crack cocaine. Based upon this incident, Washington was charged with one count of dealing in cocaine as a Class B felony, one count of unlawful possession of a firearm by a serious violent felon as a Class B felony, one count of possession of cocaine as a Class D felony, three counts of possession of a controlled substance as D felonies, one count of possession of marijuana as an A misdemeanor, one count of driving while suspended as an A misdemeanor, one count of dealing in cocaine as an A felony, one count of

possession of cocaine as a C felony, one count of possession of cocaine as an A felony, and three counts of possession of a controlled substance as C felonies. Following a jury trial, Washington was convicted of several counts, which the trial court merged into the single count of dealing in cocaine as a Class A felony. It is from this conviction that he now appeals.

DISCUSSION AND DECISION

Washington's sole contention on appeal is that the trial court erred by denying his motion to suppress the evidence gained from the search of his vehicle. Washington argues that the officers' stop of his vehicle was illegal and therefore any evidence seized as a result of the stop must be suppressed.

The standard for our review of a trial court's denial of a motion to suppress evidence is similar to that of other sufficiency issues. *Divello v. State*, 782 N.E.2d 433, 436 (Ind. Ct. App. 2003), *trans. denied*. We ascertain whether the trial court's denial of the motion was supported by substantial evidence of probative value. *Id*. In doing so, we will not reweigh the evidence, and any conflicting evidence is considered in a light most favorable to the decision of the trial court. *Id*. This review is different, however, from other sufficiency matters in that we must also consider uncontested evidence that is favorable to the defendant. *Id*.

The Fourth Amendment to the United States Constitution guarantees the right to be secure against unreasonable search and seizure. *Sowell v. State*, 784 N.E.2d 980, 983 (Ind. Ct. App. 2003). In *Terry v. Ohio*, the United States Supreme Court created an exception to the Fourth Amendment's requirement that a police officer have either

probable cause or a warrant before stopping a person. 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Pursuant to *Terry*, police may briefly stop an individual for investigatory purposes if, based upon specific, articulable facts, the officer has a reasonable suspicion that "criminal activity may be afoot." *Id*. at 30, 88 S.Ct. at 1884. The reasonable suspicion required for a *Terry* stop need not rise to the level of suspicion necessary for probable cause. *State v. Belcher*, 725 N.E.2d 92, 94 (Ind. Ct. App. 2000), *reh'g denied, trans. denied*. Whether the officer's suspicion was reasonable is a fact-sensitive inquiry that must be determined on a case-by-case basis. *Id*. Moreover, this fact-sensitive analysis is performed, not in a vacuum, but by considering the totality of the circumstances. *Sowell*, 784 N.E.2d at 983. The ultimate determination of reasonable suspicion is reviewed *de novo*. *Burkett v. State*, 736 N.E.2d 304, 306 (Ind. Ct. App. 2000). Thus, the question to be determined here is whether the officers had reasonable suspicion to stop Washington's vehicle.

Citing the statutes requiring vehicles operating on the roads of Indiana to have proper functioning brake lights, Washington asserts that the officers' stop of his vehicle was improper. He claims that because he had one working brake light, he was not in violation of any statute, and, therefore, should not have been stopped. Washington bases his argument on Ind. Code §§ 9-19-6-6 and –17, which state that a person may not drive a motor vehicle on the highway in this state unless the motor vehicle is equipped with at least one stoplight and that a motor vehicle may be equipped with a stop lamp or lamps on the rear of the vehicle. The trial court determined that because Washington had one functioning brake light, he could not be found to have committed an infraction for driving

without a proper brake light. However, the trial court further found that the officers had reasonable suspicion to stop Washington upon discovering that the driver's license of the registered owner of the vehicle was suspended. We agree.

Officer Van Camp testified at the suppression hearing that upon stopping for a traffic light behind Washington's vehicle, he noticed the passenger brake light on Washington's vehicle was not illuminated. At that juncture, he requested Officer Nielson, who was riding with him, to conduct a license plate inquiry. Based upon this inquiry, the officers discovered that the driver's license of the registered owner of the vehicle was suspended. Officer Van Camp further testified that he could not see the driver of the vehicle. The officers effected a stop of the vehicle, and requested the driver's license and registration. The driver was identified as Washington, who then told the officers that his driver's license was suspended. These facts constitute reasonable suspicion for the officers to stop the vehicle in order to determine whether it was Washington, whom the officers knew to have a suspended driver's license, that was driving the vehicle. *See e.g., State v. Ritter*, 801 N.E.2d 689 (Ind. Ct. App. 2004), *trans. denied*, 812 N.E.2d 798 (holding that, where officer knew registered owner of vehicle had suspended license, officer had reasonable suspicion to stop vehicle in order to determine whether it was defendant driving although officer could not see person driving

and could not verify if driver matched description of defendant). Thus, under federal constitutional analysis, the officers' stop of Washington was permissible.[1]

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that the officers' stop of Washington's vehicle was permissible such that the items seized from the vehicle during the subsequent search were not required to be suppressed as "fruit of the poisonous tree."[2]

Affirmed.

KIRSCH, C.J., and ROBB, J., concur.

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[1] Because Washington does not argue that the search and seizure provision in the Indiana Constitution requires a different analysis than the federal Fourth Amendment, his state constitutional claim is waived. *See White v. State*, 772 N.E.2d 408, 411 (Ind. 2002). Waiver notwithstanding, we note that search and seizure violations under Article I, Section 11 of the Indiana Constitution are analyzed by determining whether, under the totality of the circumstances, the police behavior was reasonable. *Jackson v. State*, 785 N.E.2d 615, 618 (Ind. Ct. App. 2003), *reh'g denied, trans. denied*. In this case, under the totality of the circumstances, the officers' behavior was reasonable. Therefore, Indiana's constitutional provision does not change our result.

[2] "The 'fruit of the poisonous tree' doctrine is one facet of the exclusionary rule of evidence which bars the admissibility in a criminal proceeding of evidence obtained in the course of unlawful searches and seizures. When applied, the doctrine operates to bar not only evidence directly obtained, but also evidence derivatively gained as a result of information learned or leads obtained during an unlawful search or seizure. To invoke the doctrine, a defendant must show that challenged evidence was obtained by the State in violation of the defendant's Fourth Amendment rights." *Moore v. State*, 827 N.E.2d 631, 639 (Ind. Ct. App. 2005), *reh'g denied, trans. denied*, 841 N.E.2d 186 (*quoting Hanna v. State*, 726 N.E.2d 384, 389 (Ind. Ct. App. 2000)).